



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/161468

PRELIMINARY RECITALS

Pursuant to a petition filed October 22, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on December 11, 2014, at Kenosha, Wisconsin.

The issue for determination is whether the agency properly denied the Petitioner's PA request for speech and language therapy services.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

I

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Theresa Walske

Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Kenosha County. Petitioner is 8 years old and lives at home with his family.

2. Petitioner's diagnosis is autism.
3. Petitioner attends [REDACTED]. He receives special education and speech and language therapy services. Petitioner receives speech language services 20 minutes/week in special education and 20 minutes/week in general education.
4. The Petitioner received Birth-to-3 services and was receiving intensive in-home ABA therapy. The ABA therapy was recently discontinued due to high turn-over and lack of progress.
5. The Therapy Attachment submitted with the PA request from the Petitioner's provider, Tender Touch Therapies, contains the following goals:
 1. Petitioner will self-advocate (e.g. requesting support, etc.) when tasks become too difficult prior to an extreme emotional outburst in 4 of 5 opportunities with moderate support and prompting.
 - a. This goal will be addressed through visual aids and verbal prompts and models, social stories and video models as needed as assessed through body language and changes in demeanor.
 - b. Parents will follow through with this goal through verbal modeling, prompting, and scripting.
 2. Petitioner will self-advocate when his frustration level reaches a level that requires a break in 4 of 5 opportunities with moderate support and prompting.
 - a. This goal will be addressed through visual aids, verbal prompts, modeling, oral scripting, social stories and video models as needed as assessed through body language and changes in demeanor.
 - b. Parents will follow through with this goal through verbal modeling, prompting and scripting.
 3. Petitioner will participate in regular "emotional check-ins" using a visual rating scale to communicate his current emotional level and to bring online self-awareness 5 – 7 times per session (i.e. every 5 – 10 minutes) with accurate correlation 4 of 5 times with moderate support and prompting.
 - a. This goal will be addressed through a visual smiley face rating scale similar to hospital pain rating scales. It will be presented at the beginning and end of every session and every 5 – 10 minutes in between to create an atmosphere of positive experiences and functionality instead of as a negative experience or punishment when addressed only during high emotional situations.
 - b. Parents will follow through with this goal given the same rating scale, as well as, education for presentation and scripting for appropriate response and positive exposure.
 4. Petitioner participate in therapist directed activity for 5 minutes with moderate prompting and support with fewer than 2 emotional outbursts with a Petitioner's selected reward after each trial.
 - a. This goal will be addressed through high interest choices, visual timers, visual task charts, and self-advocacy strategies.
 - b. The parents will follow through with this goal given education regarding appropriate scripting, support and behavior/social emotional management.
 5. Petitioner will identify expected response to familiar and common everyday situations in 4 of 5 trials with moderate prompting and support in order to increase his predictive skills enabling smooth transitions and reduce anxiety and emotional outbursts.

- a. This goal will be addressed through social stories, verbal modeling and scripting, pictorial and visual modeling.
- b. The parents will follow through with this goal given verbal scripting.

The Therapy Attachment states that upon discharge, Petitioner will be able to “maintain more appropriate emotional control and self-advocate at the prior to the loss of communicative and social/emotional control.”

The Therapy Attachment also contains the following statement: “Therapist is educated and certified as a Speech Language Pathologist from a leading university in the field and by ASHA. Therapist has skills and education necessary to make online changes in plan to elicit and train appropriate responses and skills. Therapist has skills and education necessary to provide family education for carry over. Therapist has knowledge and education to treat patients with TBI, stroke, cognitive deficits and speech and language impairments. Therapist is educated in behavioral techniques to elicit responses and participation for speech, language and feeding tasks.”

- 6. The Plan of Care (POC) submitted with the PA request indicates that a formal assessment of the Petitioner’s speech articulation was not performed and that the Petitioner is highly intelligible. Also a formal assessment of voice was not performed. A formal assessment of fluency was not performed. Based on informal observation by the therapist, she reported fluency appears age appropriate.
- 7. On August 19, 2014, the agency received a PA request for speech/hearing therapy services for the Petitioner.
- 8. On October 9, 2014, the agency issued a notice to the Petitioner denying the request for speech/hearing therapy services.
- 9. On October 22, 2014, an appeal was filed on behalf of the Petitioner with the Division of Hearings and Appeals.

DISCUSSION

Speech and language therapy is an MA-covered service, subject to prior authorization after the first 35 treatment days. Wis. Admin. Code, §DHS 107.18(2). In determining whether to approve such a therapy request, the Bureau employs the generic prior authorization criteria found at §DHS 107.02(3)(e). Those criteria include the requirements that a service be medical necessary, appropriate, and an effective use of available services. Included in the definition of “medically necessary” at §DHS 101.03(96m) are the requirements that services not be duplicative of other services, and that services be cost effective when compared to alternative services accessible to the recipient. It is up to the provider to justify the provision of the service. §DHS 107.02(3)(d)6.

In this case, the agency based its denial on three grounds: the requested services are not covered, the skills of a speech language pathologist are not required, and the services are not medically necessary.

With regard to types of speech and language therapy services covered by the program, the regulations state as follows:

1) Covered services.

- (a) General. Covered speech and language pathology services are those medically necessary diagnostic, screening, preventive or corrective speech and language pathology services prescribed by a physician and provided by a certified speech and language

pathologist or under the direct, immediate on-premises supervision of a certified speech and language pathologist.

...

(c) Speech procedure treatments. The following speech procedure treatments shall be performed by a certified speech and language pathologist or under the direct, immediate, on-premises supervision of a certified speech and language pathologist:

1. Expressive language:

- a. Articulation;
- b. Fluency;
- c. Voice;
- d. Language structure, including phonology, morphology, and syntax;
- e. Language content, including range of abstraction in meanings and cognitive skills; and
- f. Language functions, including verbal, non-verbal and written communication;

2. Receptive language:

- a. Auditory processing — attention span, acuity or perception, recognition, discrimination, memory, sequencing and comprehension; and
- b. Visual processing — attention span, acuity or perception, recognition, discrimination, memory, sequencing and comprehension;

...

Wis. Admin. Code § DHS 107.18(1).

The agency contends that the PA request is to help the Petitioner manage his emotional outbursts and anxiety. It specifically points out areas of the PA request that focus on the behavioral regulation aspects of therapy.

The therapist asserts that the goals written for the Petitioner fall within “language content” and “language functions” as well as auditory and visual processing. She states in a written summary submitted at the hearing: “all goals are written to specifically comprehend and express his emotional state and needs.”

The evidence clearly establishes that the Petitioner has significant receptive and expressive communication deficits that impede his ability to effectively communicate with others. The evidence also establishes that the Petitioner’s inability to communicate effectively results in a high level of frustration for the Petitioner. This lack of effective communication and resulting high level of frustration appears to be one of the primary factors in Petitioner’s inability to regulate his behavior.

The therapist’s plan of care states that the long term goal is to increase the Petitioner’s communication skills so that he can access and participate to his fullest potential in family and community life. One of the desired results of improved and effective communication is a decreased level of frustration and an ability to better control emotions and behavior.

Though some of the short-term goals established by the therapist to eventually accomplish the long-term goal of improved communication skills do involve services that appear to be covered speech and language therapy services, other goals in the POC are focused on behavior and emotion regulation and do not fit within the definition of covered speech and language therapy services.

Goals 1, 2 and 5 in the POC indicate the therapist will use communication aids, ie verbal modeling, prompting and scripting, to teach the Petitioner to identify and express his needs and wants. These services appear to meet the criteria for coverage.

Goals 3 and 4 are focused on the Petitioner being able to identify his emotional level (Goal 3) and increasing the Petitioner's attention span (Goal 4) so as to reduce his emotional outbursts. These are not services that may be covered as speech and language therapy services.

Because all of the goals in the POC are not covered speech and language therapy services, the PA is properly denied by the agency. This decision does not prohibit the Petitioner and his provider from re-submitting a PA request for those speech and language therapy services that are covered by the program.

CONCLUSIONS OF LAW

The agency properly denied the Petitioner's PA request for speech and language therapy services.

THEREFORE, it is

ORDERED

That the Petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

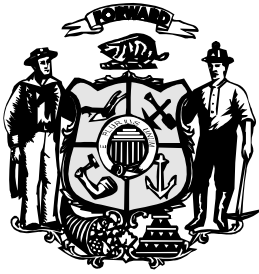
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 7th day of January, 2015

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 7, 2015.

Division of Health Care Access and Accountability